

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

AGERE SYSTEMS, INC.,	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	
BROADCOM CORPORATION,	:	No. 03-3138
Defendant.	:	

MEMORANDUM & ORDER

Schiller, J.

September 7, 2004

On July 20, 2004, the Court issued a Memorandum and Order (the “July 20 Order”) construing the claims at issue in this patent case pursuant to *Markman v. Westview Instruments, Inc.*, 52 F.3d 967 (Fed. Cir. 1995) (en banc), and requesting supplemental briefing regarding three specified claim terms. *Agere v. Broadcom*, Civ. No. 03-3138, 2004 WL 1658530, 2004 U.S. Dist. LEXIS 14187 (E.D. Pa. July 20, 2004). On August 2, 2004, the Court issued a second Memorandum and Order (the “August 2 Order”) construing the remaining claim terms. *Agere v. Broadcom*, Civ. No. 03-3138, 2004 WL 1737495, 2004 U.S. Dist. LEXIS 14992 (E.D. Pa. Aug. 2, 2004). Presently before this Court is Broadcom’s motion for reconsideration of the August 2 Order’s construction of the term “means including additional reactive elements for connecting the source and drain electrodes . . . to associated power sources.” U.S. Patent No. 2,396,195, col. 6, ll. 42-45 (“the ‘195 patent”). For the following reasons, Broadcom’s motion is denied.

I. STANDARD OF REVIEW

As previously noted in this Court’s Memorandum and Order denying Agere’s motion for reconsideration, *Agere v. Broadcom*, Civ. No. 03-3138, 2004 WL 1879985, at *1, 2004 U.S. Dist.

LEXIS 16694, at *2-3 (E.D. Pa. Aug. 20, 2004), such motions should be granted “sparingly,” *AstraZeneca AB v. Mut. Pharm. Co.*, Civ. A. No. 00-4731, 2002 U.S. Dist. LEXIS 20311, at *4 (E.D. Pa. Oct. 3, 2002), and only when one of the following grounds is established:

- (1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court granted the motion for summary judgment; or
- (3) the need to correct a clear error of law or fact or to prevent manifest injustice.

Max’s Seafood Café ex rel. Lou-Ann, Inc. v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999) (internal citations omitted). A motion for reconsideration should not “raise new arguments that could have been made in support of the original motion,” *McNeal v. Maritank Philadelphia, Inc.*, No. Civ. A. 97-0890, 1999 WL 80268, at *4, 1999 U.S. Dist. LEXIS 895, at *13 (E.D. Pa. Jan. 29, 1999), or ask the court to “rethink a decision that it has already made,” *Tobin v. Gen. Electric Co.*, No. Civ. A. 95-4003, 1998 WL 31875, at *2, 1998 U.S. Dist. LEXIS 693, at *4 (E.D. Pa. Jan. 27, 1998).

II. DISCUSSION

In the July 20 Order, the Court construed the “means including” term of the ‘195 patent and stated that “the corresponding structures in the specifications are the low-impedance paths that include additional reactive elements, such elements being devices that behave like inductors or capacitors.” *See Agere*, 2004 WL 1658530, at *35, 2004 U.S. Dist. LEXIS 14187, at 125-26. The Court identified some corresponding structures and directed the parties to provide supplemental briefing on whether the specifications disclose any additional corresponding structures. *Id.* After consideration of the parties’ briefs, the Court held, inter alia, that elements 70 and 72 of figure 2, described at col. 4, ll. 43-48 of the ‘195 patent were corresponding structures. *Agere*, 2004 WL 1737495, at *2. The Court explained that this determination was a logical extension of “Broadcom’s

own admission” that the previously adopted construction of “reactive elements” includes parasitic capacitance. *Id.* Because it was undisputed that elements 70 and 72 have parasitic capacitance, and because both parties had previously agreed upon a construction of “reactive elements” that includes parasitic capacitance,¹ the Court concluded that elements 70 and 72 must be corresponding structures. *Id.* Now, Broadcom argues that although the previously agreed-upon construction of “reactive elements” admittedly includes parasitic capacitance, Broadcom “did not – and did not intend to – waive its core position” that the term “reactive element” does not include parasitic capacitance. (Broadcom’s Mot. for Recons. at 3.) Broadcom then proceeds to address previously raised substantive arguments. This Court does not accept Broadcom’s invitation to relitigate the construction of the term “reactive element” or “means including” at this time.² Furthermore, the substantive arguments raised in the motion for reconsideration are improper because they were either previously addressed or could have been in prior submissions. *See Tobin*, 1998 WL 31875, at *2. As this Court has not been presented with any evidence demonstrating that its prior determination was in clear error or would result in manifest injustice, there is no reason to reopen the construction of this term.

¹ As noted in the August 2 Order, *Agere*, 2004 WL 1737495, at *2, Broadcom originally opposed the construction that a “reactive element” is “a device or circuit that behaves like a capacitor or inductor,” on the grounds that such a construction would improperly include elements with parasitic capacitance. (Broadcom Resp. at 103.) Prior to the conclusion of the *Markman* hearing, however, Broadcom assented to Agere’s construction. (Joint Submission of May 18, 2004 at 2.)

² In fact, to the extent Broadcom’s motion entails reconsideration of this Court’s construction of the term “reactive element,” it is untimely.

III. CONCLUSION

For the foregoing reasons, Broadcom's motion for reconsideration is denied. An appropriate Order follows.

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BROADCOM CORPORATION,	:	No. 03-3138
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ORDER

AND NOW, this 7th day of **September, 2004**, upon consideration of Defendant Broadcom Corporation's Motion for Reconsideration, Plaintiff Agere Systems Inc.'s response, and for the foregoing reasons, it is hereby **ORDERED** that:

Broadcom Corporation's Motion for Reconsideration (Document No. 90) is **DENIED**.

BY THE COURT:

Berle M. Schiller, J.